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April 21, 2004

Honorable Dianne Feinstein  
United States Senate  
SH-331 Hart Senate Office Bldg.  
Washington, D.C. 20510-0504

Honorable Jeff Sessions  
United States Senate  
SR-335 Russell Senate Office Bldg.  
Washington, D.C. 20510-0104

**Re: H.R. 2723, S.562, S.2278: Proposals to Split the Ninth Circuit**

Dear Senators:

The undersigned write to address the above referenced bills designed to split the Ninth Circuit. For the reasons outlined below, we oppose each of these bills and the notion that the Ninth Circuit needs to be split.

By way of background, the undersigned are the Chair, Chair-elect and Vice-Chair of the Ninth Circuit Lawyer Representative Coordinating Committee (LRCC), whose statutory mandate is to help improve the administration of justice in our circuit. Our combined experience with the Ninth Circuit is over 30 years. Chair-elect Mr. Saferstein has been president of the California State Bar and involved in various Ninth Circuit cases and activities, including Chair of the Ninth Circuit Judicial Conference in 1995. Mr. Rekofke, the current LRCC chair, has chaired the Ninth Circuit Task Force on Attorney Discipline and is currently a member of the Ninth Circuit Jury Improvement Committee. Vice-Chair Ms. Toledo has served on the Judicial Advisory Committee for the Eastern District of California. By virtue of many years of experience and multiple committees and interactions with attorneys and judges of the Ninth Circuit, we feel confident in our abilities to not only assess the need to split the Circuit but to report concerning the views of attorneys and judges regarding this issue.

First and foremost, splitting the Ninth Circuit should be considered only if there is compelling evidence that the interest of justice would be served by doing so. Based on our personal experience, our firms' experience and our interactions with our peers, we are unaware of any evidence that the Circuit is doing anything other than functioning well and utilizing its resources effectively.

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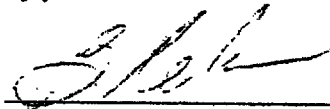
Second, the various bills under consideration are similar to legislation introduced a number of years ago, which resulted in the White Commission study and recommendation. You may recall the White Commission concluded that splitting the Circuit would increase rather than solve alleged problems. Moreover, the White Commission set forth various recommendations to help improve the Ninth Circuit, many of which have been introduced over the years. Accordingly, the grounds for splitting the Ninth Circuit are less than they were five years ago.

Third, to our knowledge, the proposal to split the Ninth Circuit does not have the support of the majority of the bench or bar of the Ninth Circuit. Historically, such support has never materialized whenever the split issue has been entertained. We submit that the views of the judges of the Ninth Circuit, as well as the lawyers who practice in the Circuit should be afforded great deference. Given the suddenness of the introduction of Senator Ensign's bill on April 1<sup>st</sup> and the almost immediate hearings, the undersigned were precluded by time constraints to formally survey the LRCC and its constituents to provide a tally from the leadership of Ninth Circuit attorneys regarding the proposed split. When the Circuit split issue arose a number of years ago, however, it resulted in a resolution at the Ninth Circuit Judicial Conference in 1991. After hearing the pros and cons, the judges and lawyers of the Conference voted overwhelmingly against splitting the Circuit. As officers of the LRCC, and practitioners in the Ninth Circuit, we believe that the majority of lawyers do not support a split of our Circuit.

From our perspective, the bottom line is simple: the Circuit is not broken, therefore it does not need to be fixed.

Thank you for consideration of our views.

Very truly yours,



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Brian T. Rekofke  
Harvey Saferstein  
Margaret Carew Toledo